IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.1003 OF 2004

Ganpat Narayan Baing ... Appellant

V/s.

The Municipal Corporation
of Greater Mumbai ... Respondent

Mr.D.M. Manoharan for Appellant
Mr.J. Xavier for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 1, 2004**

P.C.:

. The submissions made on behalf of the appellant are that the notice issued under section 314 of the Mumbai Municipal Corporation Act is illegal because the offending suit structure is not on any road, drain, canal, etc. According to the appellant, the suit structure is censused since 1975-76 and he has been residing in that structure for the past 45 years.

2. The trial Court has considered the documents brought on record by the appellant. Significantly, after an enquiry was made by the office of the Municipal Corporation with the Office of the Deputy Controller (Encroachment) Mulund as to whether the structure is censused, the Deputy Collector has informed the

Corporation that the structure is not censused. Moreover, the Collector has disclosed that he has verified the office record, more particularly, the cash book and signatures of the officers and has come to the conclusion that the letters filed by the plaintiff are not issued by the Deputy Collector. A letter is produced before me which, according to the appellant, has been issued by the Office of the Tehsildar (encroachment) Mulund. This letter is not on any letterhead but is merely a plain piece of paper with a stamp on the top of the page purportedly showing that it is issued by the office of the Tehsildar. Another handwritten letter is also furnished by the appellant stating that the suit structure is censused.

3. The trial Court has correctly appreciated the documents on record and therefore, I see no reason to interfere with the findings of the trial Court. The submissions made that the suit structure is not on any road, drain, canal, etc. and, therefore, cannot be demolished under section 314 is fallacious because under section 314(d), any person occupying the public land unauthorisedly can be removed from such land. There is nothing on record to show that the land in question was not public land.

4. In the circumstances, I do not think it necessary to interfere with the findings of the trial Court. Hence, Appeal from Order is dismissed. The letters produced by the Appellant are hereby impounded and marked ‘X’ collectively for identification and the same may sent to the trial Court.

5. In view of the dismissal of the Appeal from Order, nothing survives in Civil Application No.1470 of 2004 and the same is disposed of accordingly.